



Agenda Item No. _____
Meeting of _____

City of Tigard

Tigard City Council Meeting Minutes

October 23, 2012

Mayor Dirksen called the meeting to order at 6:30 p.m.

Attendance:

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

Staff Present: City Manager Wine, Assistant City Manager Newton, Assistant Public Works Director Rager, Engineering Manager McMillan, Human Resources Director Zodrow, City Engineer Stone, Parks Facilities Manager Martin, Confidential Executive Assistant Gaston, Redevelopment Project Manager Farrelly, City Attorney Hall, City Recorder Wheatley

- **STUDY SESSION**

- A. City Manager Evaluation: Setting Criteria & Process

Human Resources Director Zodrow presented the staff report.

The purpose of the agenda item is for the City Council to decide on the criteria and process to conduct the annual performance review for the city manager. At an upcoming City Council meeting, the public will have an opportunity to give input to the criteria and process selected by council. In late November, the City Council will conduct the review.

Discussion followed:

- Human Resources Director Zodrow referred to the past forms used by the council and staff for the city manager evaluation.
- Consensus of the City Council was to use the same process as used in the past and as presented with the Agenda Item Summary for this matter.

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- City Manager Wine proposed a 360 degree evaluation to receive input/feedback from selected community members, staff and colleagues/partners from other agencies as well as the City Council. Mayor Dirksen said he would be fine with feedback as proposed within the City Council's evaluation process. Councilor Wilson said a great deal of what is covered in the format used by the City Council might not be applicable for others to use to evaluate. City Manager Wine said she was thinking the additional evaluators would consist of about six people who would be asked to weigh-in on a couple of the dimensions in the performance appraisal relating to community and regional aspects of her role. Consensus of the City Council was to add this element of the review as proposed by City Manager Wine. Councilor Woodard said his experience has been that a 360 degree review helps one to hone in on some skill sets that might not come to mind otherwise and helps with development in leadership.

B. Administrative Items

The City Council calendar was reviewed:

November 6 - Election Day - CCDA Meeting Canceled (Tuesday)
 November 12 - Veteran's Day Observed - City Hall Offices Closed (Monday)
 November 13 - Council Business Meeting - 6:30 p.m., Red Rock Creek Conference Room/Town Hall (Tuesday)
 November 20 - Council Workshop Meeting - 6:30 p.m., Town Hall (Tuesday)
 November 22 - Thanksgiving Holiday - City Hall Offices Closed (Thursday)
 November 27 - Council Business Meeting - 6:30 p.m., Red Rock Creek Conference Room/Town Hall (Tuesday)

Mayor Dirksen said January 8 is the first meeting of the Tigard City Council, which is primarily a ceremonial meeting. The new mayor will be inaugurated as well as two City Council members, Marland Henderson and Jason Snider. Mayor Dirksen said he plans to attend in the audience. The mayor said January 7 is the Metro Council inauguration and he invited council and staff members to attend the reception and inauguration at the Portland Center for Performing Arts (4 p.m. reception; 6 p.m. swearing in ceremony).

As the council prepared to go into the Executive Session, City Manager Wine referred to a request from Councilor-elect Snider to attend Executive Sessions. After brief discussion, it was the council members' consensus to agree to allow the Councilor-elect to attend.

Mayor Dirksen read the citation for the City Council to go into Executive Session.

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- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:45 p.m. to discuss real property transaction negotiations under ORS 192.660(2) (e).

Executive Session concluded at 7:28 p.m.

1. BUSINESS MEETING - October 23, 2012

A. Mayor Dirksen called the business meeting to order at 7:33 p.m.

B. City Recorder Wheatley called the roll:

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports Council President Buehner advised she will give two reports later in the meeting (see Agenda Item No. 6).

E. Call to Council and Staff for Non-Agenda Items None

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication - None

B. Citizen Communication – Sign Up Sheet -

Cleon Cox, 13580 SW Ash Avenue, Tigard OR 97223 signed up to address the council on “additional facts regarding light rail.” His comments included:

- He asked if the council knew John Charles or Steve Buckstein, who are Tigard residents and work for Cascade Policy Institute, which is a non-partisan think tank focusing on money issues/taxes. Mr. Cox said many places do not utilize the Institute’s services and he does not understand why.
- Mr. Cox referred to future light rail coming down Barbur Boulevard to Sherwood. He said some people “here are apparently in favor of or want and they don’t want the citizens to be able to speak up to say whether or not they want it.”

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- Mr. Cox said he does not understand why “you” don’t seek outside advice in addition to “your” own administrative advice. He said it bothers him that the council will not go to a forum such as the Cascade Policy Institute, which has empirical data showing the light rail is a waste of money.
- He asked the council to look out for the taxpayers. He said he was disappointed with a “few of you” who seem to want to side up with and hang out with the cronies of big government. This is not helping “any of us,” especially those on a fixed income. He said a rail system was not needed; buses work very well.

Mayor Dirksen reviewed the consent agenda:

3. CONSENT AGENDA: (Tigard City Council) - These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action.

A. Approve City Council Meeting Minutes for:

1. July 24, 2012
2. August 14, 2012
3. September 11, 2012

B. Adopt a Resolution in Support of Changing the Name of the Tonquin Trail to the Ice Age Tonquin Trail

RESOLUTION NO. 12-39 - A RESOLUTION IN SUPPORT OF CHANGING THE NAME OF THE TONQUIN TRAIL TO THE ICE AGE TONQUIN TRAIL TO PROMOTE PUBLIC AWARENESS, AND ENHANCE FUNDING OPPORTUNITIES AND ECONOMIC DEVELOPMENT THROUGH TOURISM AND SCIENTIFIC RESEARCH

C. Amend City Manager Employment Contract

D. Adopt a Resolution Authorizing the Submission of a Grant Application to Partially Fund Construction of a Segment of the Fanno Creek Trail

RESOLUTION NO. 12-40 - A RESOLUTION AUTHORIZING THE SUBMISSION OF AN OREGON DEPARTMENT OF TRANSPORTATION (ODOT) TRANSPORTATION ENHANCEMENT AND BICYCLE & PEDESTRIAN GRANT APPLICATION TO PARTIALLY FUND THE DESIGN AND CONSTRUCTION OF A SEGMENT OF FANNO CREEK TRAIL FROM GRANT AVENUE TO WOODARD PARK

E. Authorize the Mayor to Execute an Intergovernmental Agreement with Clackamas River Water Providers

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- F. Authorize the Mayor to Execute an Intergovernmental Agreement with Metro Regarding Trail Signage
- G. Approve Third Quarter Council Goal Update

Motion by Council President Buehner, seconded by Councilor Wilson, to approve the Consent Agenda, with Councilor Wilson advising he would *abstain from voting on the July 24, 2012 meeting minutes because he was absent.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes *(with abstention as noted above)
Councilor Woodard	Yes

4. CONTINUATION OF PUBLIC HEARING ON URBAN FORESTRY CODE REVISIONS - URBAN FORESTRY CODE REVISION PROJECT - COMPREHENSIVE PLAN AMENDMENT (CPA) 2011-00004 DEVELOPMENT CODE AMENDMENT (DCA) 2011-00002

REQUEST: To implement the city's Comprehensive Plan as recommended by the Urban Forestry Master Plan, the City of Tigard is proposing a Comprehensive Plan Amendment adopting the "Significant Tree Groves" Map and Tigard Development Code (Title 18) Amendments to Chapters 18.115, 18.120, 18.310, 18.330, 18.350, 18.360, 18.370 18.390, 18.530, 18.610, 18.620, 18.630 18.640, 18.715, 18.745, 18.775, 18.790, and 18.798. (Non Land Use Elements) In addition, in support of the Title 18 amendments, amendments are proposed to the Tigard Municipal Code (TMC) Chapters 1.16, 6.01, 6.02, 7.40, 8.02 through 8.16, 9.06, and 9.08.

LOCATION : Citywide. ZONE: Citywide.

APPLICABLE REVIEW CRITERIA: City of Tigard Community Development Code Chapters 18.380 and 18.390; Comprehensive Plan Goals 1, Citizen Involvement; 2, Land Use Planning; 5, Natural Resources; 6, Environmental Quality; 7, Hazards; 8, Parks Recreation, Trails and Open Space; 9, Economic Development; 10, Housing; 11, Public Facilities and Services; 12, Transportation; 13, Energy Conservation; and 14, Urbanization; METRO's Urban Growth Management Functional Plan Titles 1, 3, 12 and 13. Statewide Planning Goals 1, 2, and 5 through 14.

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- A. Urban Forestry Code Revisions - Land Use Elements
- B. Urban Forestry Code Revisions - Non Land Use Elements

Mayor Dirksen announced the continuation of this public hearing and that these are combined hearings on the land use and non-land-use elements of the proposed urban forest recode revisions continued from September 11, 2012. Mayor Dirksen advised there would be opportunity for public testimony after the staff report.

STAFF REPORT

Associate Planner Daniels presented the staff report. A slide presentation was utilized during the staff report and is on file with the original Council packet materials.

- Reviewed the history of the discussion held at the public hearing on September 11, 2012.
 - Staff presented a list of 47 issues of interest.
 - Council gave directions to staff to categorize and simplify the list.
- The new list of categorized issues is before the City Council tonight. Ms. Daniels reviewed the list format.
- The main topic of discussion this evening will be the policy issues.
- Issues for clarification are also before the council this evening.
- Future issues are listed which are not before the council for consideration at this time.

Ms. Daniels introduced consultant Todd Prager to present information at this point in the meeting.

Also present: Consultant Todd Prager; Kirsti Hauswald, Landscape Designer for AKS Engineering & Forestry; Dave Walsh, Planning Commission President and member of the Citizens Advisory Committee; Tom McGuire, Acting Community Development Director; and John Floyd, Associate Planner.

Consultant Prager provided background on the eight policy issues.

Policy Issue 1 – Is the canopy approach an appropriate regulatory tool?

- The community values the presence of trees – aesthetics, clean air and clean water.
- Past experience has shown not everyone in Tigard values trees equally. The proposal is flexible enough to address the range of desires for trees and for good design results.
- There has been broad community support throughout the process for the four flexible options for meeting the tree canopy requirements with development.
- Mr. Prager reviewed the methods to attain compliance through preservation, planting, fee-in-lieu, and discretionary review.
- The Planning Commission recommended adoption of the canopy approach. Staff placed an alternative approach in tonight's meeting packet for council's consideration. Council could direct staff to develop some sort of alternative

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approach with the understanding that additional staff time would be required to rework the proposal. Staff recommends testing results of any new alternatives.

Policy Issue 2 – how will the requirements apply to various sites?

- Mr. Prager reviewed canopy requirements in a tiered approach for various zoning designations.
- The proposal is consistent with the existing conditions where we see more trees in residential areas than in non-residential areas.
- During the peer review and the range of sites tested, every site was able to meet the requirements through planting and preserving a reasonable amount of trees.
- As an alternative council could direct staff to develop a different approach or different canopy requirements.

Policy Issue 3 – should developers be required to maintain trees for two years?

- Under the existing code developers are required to maintain trees that were planted to meet mitigation requirements for two years, but they are not required to maintain trees such as street trees or parking lot trees for a two-year period.
- Under the proposed code, Planning Commission recommended continuing to require two years of tree maintenance but also applying those maintenance requirements to street trees and parking lot trees. These trees are just as important, if not more important, than the mitigation trees.
- An option before the Council this evening is to modify the permit process to modify the maintenance requirements for trees planted on private, single-family residential lots. The idea is people will maintain trees in those locations anyway. One caution was pointed out – new homes do not necessarily sell immediately and if no maintenance is supplied, trees would be more likely to die.

Policy Issue 4 – should permits be required to remove trees required with development?

- The current process means that to remove healthy trees required with a past development, a property owner must apply to amend the prior land-use approval or pay illegal tree removal fines after trees are removed. Both of these options can cost thousands of dollars.
- The proposed code creates a separate “no fee tree removal permit process” in Title 8 of the Tigard Municipal Code. The intent of this proposal is to increase flexibility compared to the current process. Because this proposal increases flexibility, while the same time meeting the public’s expectations that certain trees, such as parking lot trees, will be retained even after they are planted with development, the Planning Commission recommended adopting the proposed permit process.
- One of the alternatives before the Council this evening to modify the proposed permit process to exempt permits for private, single-family residential lots. People are likely to maintain trees in these locations regardless because of the value they provide. One caution, some neighbors may have the expectation that if a tree was preserved as part of a past development project, it will remain in that location. Or,

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in the proposed code if a tree was planted to meet the tree canopy requirements, it will continue to be maintained in the future.

- One of the alternatives before the Council this evening is to modify the proposed permit process to exempt permits for private, single-family residential lots.

The next two policy issues address the hazard tree matter.

Policy Issue 5 – should hazard trees be prohibited in Tigard?

Policy Issue 6 – should hazard-tree standards address personal liability requirements?

- Hazard trees are prohibited in the existing code. The proposal is to continue this prohibition while at the same time clarifying the definition of a hazard tree and the process for how hazard trees are identified.
- The proposed hazard tree requirements are recommended for adoption to clarify existing code requirements.
- Policy Issue 6 – this policy issue was discussed later in the meeting.

Policy Issue 7 – should the Administrative Rules be eliminated or moved into the code?

- The Planning Commission recommended maintaining the current separation of administrative rules and code. The administrative rules provide certainty as regarding what is required for city approval. These rules were supported by both the Homebuilders Association and the Citizen Advisory Committee.
- Without written rules and if there is lack of clarity in the code, staff must use their discretion when applying the code. This has led to the current situation where there are numerous staff interpretations or reliance on unwritten past practices.
- Council does have the option of eliminating the administrative rules or moving some or all of the rules into the code during the administrative rule adoption process.

Policy Issue 8 – does the proposal increase the cost of development?

- Application of the rules during the peer review found that overall costs are not expected to increase. In many cases, costs are expected to decrease significantly due to the elimination of mitigation costs. There may be a small to moderate increases to the design costs when comparing the existing code to the proposed code.
- Council does have the option of addressing costs during the upcoming administrative rule adoption process.

Council Discussion:

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– P 1 – canopy requirement approach-Ms. Daniels referred to the four options proposed to be utilized to meet the canopy requirement. Staff is checking with the council to determine if it prefers to stay with the Planning Commission recommendation or to provide direction to staff to propose an alternative requirement.

Councilor Woodard advised he was comfortable with the proposed canopy requirement option. He noted the difference between requiring more trees and the goal of attaining a certain amount of canopy.

Mayor Dirksen said this a stated goal of this council that it wants to preserve canopy and to augment canopy in places where it is needed. Basing our regulatory tool on canopy means that it is very outcome oriented.

Councilor Wilson said he personally does not have a problem with the canopy approach in concept except for the amount of analysis to determine compliance. His primary problem is that the proposal is too complicated and he would like to see the entire code simplified and made easier to implement.

Council President Buehner said she does not have a problem with the concepts for the canopy approach. Her issue is that she thinks the numbers with regard to the amount of canopy are way too high. Similar to Councilor Wilson and Councilor Woodard, she thinks there are plenty of trees in the city. As a homeowner, she said she feels the new standards are restrictive and would make life difficult for those people who would prefer to have more sunshine in their yards to grow plants that need the sun. She agrees with Councilor Wilson that the proposed code amendments are too complicated. She added that it has the potential to increase the costs for small infill developments, which she thinks is unfair because the small developers are not as likely to have the resources to fund their project.

Mayor Dirksen commented that the matter before the Council at this point in the discussion is whether to support the canopy approach. He noted some of Council President Buehner's comments would pertain to Policy Issue 2.

City Manager Wine summarized and clarified council members' general positions at this point: For Policy Issue 1 – in terms of regulatory control, the Council members are generally agreeable. City Manager Wine asked for additional comment on what is meant by code complexity and whether this concern is related to the level of canopy coverage as an overall goal. Councilor Wilson responded to the issue of complexity: At this time we have requirements for parking lot trees, which are standard requirements throughout the region. We also require street trees and trees for a buffer between adjacent developments. Beyond these requirements, developers are free to plant trees as they choose and they do plant trees. Consequently, more trees are often planted than what is currently required by the code. The layer of complexity added through the proposed code amendments includes determining the type of tree to be planted, a formula to determine its eventual canopy cover and potential deductions for circumstances such as when tree canopies overlap. He described the process

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of providing documentation, which will be quite a bit more work than what is required now. Councilor Wilson said he never thought that the problem was that the city was not requiring enough trees to be planted; the problem was that the trees required to be planted never grew to their ultimate size. It was really a soil volume issue, which he strongly supports. He suggested having a developer demonstrate that his method will meet the code requirements rather than prescribe exactly how to achieve soil volume requirements. Councilor Wilson said the process is relatively simple now, the problem is not the lack of trees but, rather, not supporting the trees sufficiently so they thrive.

Council President Buehner noted she agreed with Councilor Wilson that the proposal is too complicated and added that some trees might be well suited for residential areas but not appropriate for parking lot because of the heat stress. She suggested the tree list for parking lots might need to be reevaluated.

Associate Planner Daniels asked if Council was contemplating asking staff to reevaluate the proposed code amendments to determine if there was a way to simplify the language and remove some of the layers being offered in the proposed code amendments. Councilor Wilson clarified that the city requirements should be more intuitive so an individual could readily grasp the essence of what the city is requiring. He referred to the numerous formulas and details specified in the code language. The No. 1 objective is to assure that trees are able to reach full maturity. He spoke for simplifying the process insofar as one should demonstrate that these requirements could be met without being forced to follow specific specifications to attain compliance.

Mayor Dirksen, in response to Councilor Wilson's call for simplification, said he would argue that there would have to be a requirement supporting a city staff position that what has been presented would or would not work. Councilor Wilson said that the requirement could be stated in simple terms such as each tree must have a certain amount of soil volume at the time of planting. Councilor Wilson explained further that the details of how one arrives at the soil volume do not need to be set out in detail, only that it can be explained and shown that required soil volume was achieved.

Mayor Dirksen reminded the City Council of the initial charges that were given to the staff, Planning Commission and the Task Force. One of those was that the Council had identified an aspirational goal to increase the city's tree canopy from what it is now, which is about 25 percent, up to about 40 percent. Another charge was to come up with the regulatory tool to preserve existing tree groves. He recalled there was a detailed process the city went through to inventory and identify those groves. As this revision process was begun, one of the charges the Council gave was to come up with a code that would allow us to preserve those existing tree canopies to the extent possible, while the same time allowing property owners the use of their property. He noted this second charge was a difficult task to accomplish. Mayor Dirksen said that what is now before the Council was created in an effort to meet the charges identified by the Council. He said he has not heard that Council

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members have recognized that this was its initial goal. He offered that the way the proposed code is now written was done to meet those charges.

Councilor Woodard responded that he was not on Council at the time those goals were set. He acknowledged that the 40 percent tree canopy is aspirational, but with all the credits available he does not think that the 40 percent is achievable. Mayor Dirksen clarified that the 40 percent tree canopy aspiration was not for a 40 percent canopy in residential areas where development was taking place, but the goal was for an overall 40 percent tree canopy throughout the entire city, including parks, etc. City Manager Wine further clarified that the aspiration was to be achieved over a 20+ year period. Councilor Woodard said reviewed all the elements of the proposed urban forestry code revisions and noted there would be opportunities for balancing out the requirements so that the aspirations are a reasonable target. He referred to the complexity and the overwhelming task of looking at this project as a whole, and suggested a section-by-section review comparing each policy in meeting the city's goals. He said that he would like to find a way for the Council to move forward because there is so much ground to cover. He noted that anything the Council adopts will be reviewed again within five years and adjustments can be made if necessary. In general, Councilor Woodard said he is in agreement with the proposed language, however, he believes the assumptions will need to be tested over time. He said he supported the Council going through each area to identify what should be code language and what should be placed within the administrative rules for guidance. He urged Council to reach agreement so that staff would have a basis to proceed.

Council President Buehner restated a position she said she presented at an earlier Council meeting and that, to her, aspirational means that it is not required. When she voted in favor of the concept, she assumed that the city would be asking people to consider implementing certain activities with regard to trees, but these would be suggestions and not requirements. She said her understanding was incorrect and she was wrong to vote in support of the council's charge statements a couple of years ago. She said it was not her intention in any way to mandate what people could do on their private property outside of street trees. Mayor Dirksen said that discussion will be held later this evening to address the issue Councilor Buehner has raised.

City Manager Wine commented that the hope is for the Council to reach consensus on some of the policy matters before it this evening or to direct staff to take another look at the policy matters and redraft code language for the Council's consideration.

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Councilor Wilson noted the issues he brought up previously regarding the complicated code provisions and administrative rules. Circles drawn for canopy targets desired are essentially fictitious; that is, what is “hoped for” in the next 50 years. If the proposed code had been in place up until now, we would be similarly situated with regard to overall tree canopy. He said a tree canopy approach was just a different method of calculation. He said he is fine with changing the code language as long as the sum total is easier to understand.

Mayor Dirksen said with regard to P1, the Council has two choices before it this evening. They can say yes the tree canopy approach is the correct approach and then discuss the nuances of this approach; or, say no and throw out what has been done and start over. The entire code revision recommendation is based on P1. Councilor Wilson said he was willing to say yes to the canopy approach and added that, in the end, his support will be based upon reining it into some kind of package that is easier to use.

Councilor Buehner said she does not have a problem with the concept of the canopy approach, but noted the issues are contained within the details.

City Manager Wine said the P1 and P2 issues are interrelated, and infill sites and subdivisions might be the next thing the Council should review.

Councilor Henderson said his view is that the proposed language offers one way of coming to a conclusion. He said the proposed language offers a good way to double check to determine if the proposed “pieces” will amount to the hoped-for “whole.” He said that overall he is comfortable with the proposed language for the canopy approach.

Policy Issue 2 - Associate Planner Daniels said this policy issue looks specifically at how the requirements will apply to various sites. Small lots are specifically mentioned. She asked for the City Council to delineate its concerns with this code language.

Consultant Prager reviewed the chart on the PowerPoint slide presentation showing propose ranges for different areas of zoning. During the inventory analysis performed during the master planning process, the residential areas of Tigard now have a little over 30 percent canopy. During the process, it was noted that residents are satisfied for the most part with the amount of tree canopy in their neighborhoods. The proposal is compatible with the existing amount of trees in residential areas. The bigger change will be in the new language requirements for commercial and industrial areas, where we have heard from the community and the Council that we want to have additional tree canopy in these areas. This is particularly true for parking lots.

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In response to a question from Councilor Henderson, Consultant Prager and Mayor Dirksen offered additional information. If a piece of property to be developed was already in a heavily treed area that would have a 40 percent canopy once the development was completed, these existing trees would mean a developer would receive a double credit. This would mean that the development would have “80 percent” coverage or 200 percent of the required canopy. Then if street trees are computed into the coverage, one might end up with a coverage calculation of 215 percent. There was comment from Councilor Henderson and Councilor Buehner about this being quite complicated for the public to understand. Associate Planner Daniels pointed out that this example is only a representation of what could happen.

Councilor Buehner reiterated that the language is too complicated. She gave as an example small lots and said she would not be voting for anything that would require additional canopy. Rules need to be different for small-lot subdivisions; that is, minor land partitions. Councilor Wilson pointed that one could pay a “fee in-lieu-of.”

Interim Community Development Director McGuire addressed the Council on the subject of small-lot subdivisions. Minor partitions will need to go through a pre-application conference where staff will sit down and walk through with the developer the requirements for his project. Doubling of the existing canopy will give incentives to save trees, which is not built into the code now. Staff will be able to advise the developer about different ways they can meet the requirements of the code; it will not necessarily be up to the developer to consider all the methods that might apply. The Mayor summed it up by saying that the developer might ask what is needed to meet the requirement and the staff would offer alternatives.

Councilor Buehner said each person needs to be able to understand the requirements and have everything explained to them. She restated it is too complex. She called for simpler code language.

Consultant Prager referred to the peer-review process conducted when applying the code language. The process followed was for a conceptual review of the proposed development. The staff person guided the discussion about how the applicant could meet the requirements. The details contained within the manual were referred to only when there was a question about specific matters such as whether credit is received for canopy in specific instances. The rules aren’t necessarily used as a “cookbook” regarding how to develop a site, but they are more for reference when needed. The City of Sherwood has adopted a similar urban forestry code based on tree canopy and it has been successfully implemented.

Councilor Buehner commented on complex code language and the potential for litigation.

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Councilor Woodard reflected on a development by his family in the 1990s. He said that the requirements were straightforward. He asked for an explanation of how one would go about starting the process for a small development and the costs associated. Consultant Hauswald said she does not believe costs would be greater than what is required by the current code. The number of trees to be planted is not being increased with the proposed code language. Councilor Woodard said he would want a private, small developer to be able to easily obtain information about what he needs to do and, at the same time, keep the costs down.

Consultant Hauswald advised Councilor Woodard about a site that was looked at during the peer review process similar to the small development he referred to. If existing trees are not on the site, a developer would probably have to plant additional trees. In discussion with Councilor Woodard, Ms. Hauswald advised that she did not believe there would be additional costs with the new regulations for installation and construction costs.

Councilor Wilson confirmed with Consultant Hauswald that the “shadow” of the tree does not need to fall on one’s property and it does not matter if the “shadows” of trees overlap. If this is the case, Councilor Wilson questioned whether values could be assigned to certain types of trees and avoid all of the documentation. Interim Community Development Director McGuire pointed out that this documentation is depicted in the administrative rules and is meant to be guidance for those who are unfamiliar with what is required. After discussion, Interim Community Development Director McGuire assured Councilor Wilson that if an individual can demonstrate they can meet the code requirements, staff will not object to the way the information is formatted.

In response to comments from Councilor Woodard, Consultant Prager advised that under the existing code one would have to hire an arborist for a minor land partition. Under the proposed code, you would still be required to hire an arborist or a landscape architect – the difference is that mitigation would be eliminated and this would be a cost savings.

Associate Planner Daniels checked with the Council on the progress in reviewing Policy Issue No. 2. She said information before the Council explained how the requirements would pertain to different sizes of development. As the Council discussion has proceeded this evening, she said she has also heard concern about costs, the amount of work required to meet the proposed code – what would actually be required to be turned in to staff to achieve approval. Councilor Wilson said he is no longer concerned if he was able to demonstrate the amount of canopy cover by listing the types of trees he would be planning to place on a proposed site. In response to a question from Mayor Dirksen, Interim Community Development Director McGuire said an informal sketch could be submitted and approved, if staff could determine the proposal would meet the code requirement.

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City Attorney Hall said the administrative rules could be couched with language that says the procedures listed are the City of Tigard's preferred method, however, if an individual can prepare something equivalent and it conveys the same amount of information to determine compliance, then this would also be acceptable. Specific elements such as size of paper, where the key is located on the document, etc., should be noted to be desirable but not required.

After discussion on process, council members weighed in on P2 regarding whether to accept the Planning Commission recommendation for approval. Councilor Wilson and Councilor President Buehner noted the actual requirement is not an issue for them; however, the process required to meet that condition was problematic – P2, the policy issue, is acceptable as presented. Council President Buehner added that she would also like assurance that the wording as proposed by City Attorney Hall with regard to process implementation not being mandatory is included. Councilor Woodard noted his support as well and noted he thinks the cost savings provided by the new language is a plus. Councilor Henderson advised he finds P2 to be acceptable and referred to the provisions for the small developer. Mayor Dirksen agreed that the costs for a small development would appear to be minimal.

Public Testimony

John Frewing, said he was a member of the Citizen Advisory Committee. Mr. Frewing gave his address as 1300 NE 16th Ave., No. 1104, Portland Oregon. He said he has provided the Council with a good number of comments and said he had not received a response. Mr. Frewing said that he thought council should have a response from staff before it concluded the hearing process.

Mr. Frewing said he understood that a canopy approach has not been implemented elsewhere in the United States. He said that Portland considered this type of approach but abandoned it. Elsewhere in the country there are references to a canopy approach, however, such complex rules are not being associated with what is being required. He said the canopy approach was not requested in the public opinion surveys, which led to the Urban Forest Master Plan. The Master Plan does not provide a mandate for a canopy approach. It will be difficult to implement. Mr. Frewing said he was opposed to a canopy approach.

Mr. Frewing reviewed comments he made, which have not received a response. The use of the word “feasible,” as an approval standard, is not a standard when accompanied by the legislative history of this work. “Feasible” is something that appears to be determined by the applicant solely and in totality. The term “feasible” needs to be qualified. In response to a question from Councilor Wilson, Mr. Frewing said he is uncertain where the term “feasible” is being utilized in the current proposed language.

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Mr. Frewing said in December 2011, he provided written testimony that approval criteria are difficult to place in the administrative manual. State law requires that the regulations implement land use plans, not administrative rules. He said he provided references to ORS citations and LUBA rules that called for approval criteria. He noted that the proposal continues to use approval criteria very generally.

Mr. Frewing said that on July 24, 2012, he addressed a memo to the City Council providing a number of comments for which he is not received response. He reviewed the following:

1. OAR 660.023.250(3)(A) calls for an ESEE on the entire urban forestry program, since it is “creating and amending a resource list or a portion of an acknowledged plan or land-use regulation adopted in order to protect a significant resource.”
2. Oregon Rules call for cities to implement comprehensive land-use plans and regulations. Shifting the substance of urban forestry programs to the manual or other municipal code sections does not meet requirements.
3. ODFW had a number of comments. Only one of these comments was implemented in the draft materials so far. This related to some incentives for native tree species. Coordination, under Oregon rules, requires not only consideration of agency comments, but implementation wherever possible. ORS 197.015 (5) was cited by Mr. Frewing as his reference.

City Attorney Hall advised that Mr. Frewing’s testimony did receive a response from staff and this information has been included in the hearing materials. In response to a request from Mr. Frewing, City Attorney Hall said he would see that Mr. Frewing receives a copy of this information.

There was no further public testimony.

Discussion followed on the proceedings and the format and objectives for the remaining time for this matter this evening.

P3 – should developers be required to maintain trees for two years?

Council President Buehner said this referred to an outstanding issue she brought up previously -- the developer is not developing the property to own the property, but is developing the property to sell the property. This would mean that the property would be conveyed to a property owner in less than two years. She asked if the code language means that the developer would be responsible to maintain the trees on property now owned by someone else.

Councilor Wilson said it is almost universally true that a landscape contractor has to guarantee trees for at least a year. Essentially he said he is not sure what difference it makes with regard to who is required to maintain the trees.

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Mayor Dirksen said that requiring a developer to make sure a tree survives helps assure that when the tree is planted, the developer does an adequate job. If the tree does not survive, the developer is required to replace the tree. Councilor Wilson said he believes there is a difference between subdivisions and commercial development. In a commercial job, there are warranty issues for which the contractor is held responsible for at least a year. He said that a two-year requirement appears to be long for a commercial project. Councilor Woodard said he would be agreeable for at least a one year time period to hold a developer liable for tree survival and said that two years seems to be overly long.

City Manager Wine said options brought before the Council by staff include segmenting the requirement for tree survival by development type or to reduce the requirement from two years to something less than that.

Councilor Wilson suggested that the warranty by the developer/contractor could be for one year and that survival after that would be the responsibility of the property owner.

Mayor Dirksen said he would have no objection to splitting the time period for requiring tree survival with different requirements for commercial/ industrial developments from residential developments.

In response to a comment from Council President Buehner, Mayor Dirksen said that P3 does not address the issue regarding the homeowner who does not want to have a tree or trees on their property.

Council discussed language in the policy area regarding maintenance of trees by a developer in residential developments as opposed to all other types of developments. City Attorney Hall summarized what he heard to be the Council consensus: tree maintenance would be the responsibility of a developer for two years or until it is sold to a private resident. All other development will have a requirement for a one-year tree maintenance responsibility.

P4-Should permits be required to remove trees required with development?

Mayor Dirksen observed that under the current code there is no process permitting or otherwise available to address the removal or replacement of a tree required when the property was developed. If a tree was required to be preserved or included during the development, then it must be preserved. Because there is no permit process this means that the homeowner would have to come back to the city and go through a process to amend the prior land-use permits to legally remove the tree. The Mayor advised this is language that “must go away.”

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Council consensus was for the alternative proposed language, which was to not require tree removal permits for private single-family residential lots. This would be outside of requirements for street trees. In response to a question from Councilor Henderson, Heritage Trees would be addressed in a different section of the code.

P5-Should hazard trees be prohibited in Tigard?

Council President Buehner said that there are a significant number of homeowners' fire insurance policies that provide that unless the city has a process to declare a tree a hazard tree, then there is no financial assistance for a homeowner to remove the tree. If it has been declared a hazard tree, some policies will help in the cost of removing the tree.

Council members discussed the process and language that could assist property owners with hazard trees. Councilor Wilson suggested that the hazard tree be identified on a complaint-driven basis.

Associate Planner Daniels pointed out this the Council discussion pertains to both P5 and P6. P5 contains the word "prohibited" and Ms. Daniels said that the tree would only be designated a hazard tree after complaints are verified. The "hazard" would be assessed by an arborist. Mayor Dirksen suggested wording should be pertinent to this statement, "Should the City of Tigard be able to address hazard trees?"

P6-Should hazard trees standards address personal liability requirements?

Associate Planner Daniels advised that she understood Council President Buehner's concern that the City of Tigard have a process for determining when a tree presents a hazard which could assist a homeowner with the cost of moving the tree with insurance money.

Councilor Henderson asked who would hire the arborist to determine that a tree is a hazard. Consultant Prager advised that to go through the city process, the complainant would have to bear the cost. The city would hire a third-party arborist to assess the tree and make the determination to the city.

In response to a question from Mayor Dirksen, City Attorney Hall said that a definition of who has standing to file a complaint must be defined if the city wants to limit the source of complaints. Typical code complaints such as uncut lawns, do not require "standing" in order to file a complaint.

After some discussion, consultant Prager advised that there is a standing requirement in the proposed language. The citizen committee had a similar concern that someone could simply file a complaint for no particular reason. A complainant would have to demonstrate that they were within a target area to be harmed by the tree.

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Council President Buchner suggested that the Council discuss P8 next given the hour. She said P7 will likely be somewhat controversial and to discussion be deferred to a future meeting.

P8-Does the proposal increase the cost of development?

Council President Buchner suggested this might be another issue that should be separated with regard to commercial and residential development.

Councilor Wilson noted his concerns were with the costs of producing the plans. He suggested that the requirements be stated for the canopy and soil volumes and then, if staff has doubts, staff could ask the person to demonstrate how the requirements are met.

Mayor Dirksen noted that he liked the chart that was shown as an example in that it showed how the issue of expensive mitigation costs were being addressed for a small development.

In response to a statement by Consultant Prager, Councilor Wilson said he would like the code language to identify for a developer how Tigard determines canopy. The developer would then be asked to demonstrate how his development meets the canopy code requirements. The same would be true for soil volumes. It would not be necessary to prescribe how to meet the requirements – examples could be provided.

City Attorney Hall said wording should be included so there is flexibility for a design professional to choose an efficient way to demonstrate compliance of the standards. Councilor Wilson said that he believes P7 affects this area as some of the administrative rules might need to be included in the code to clearly delineate what is required.

Discussion ensued on the purpose of an administrative rules manual. Upon an observation by City Manager Wine, additional discussion on the administrative rules will be held at a future meeting.

Councilor Wilson noted that the new language regarding soil volumes will definitely increase development costs and this is intentional because of historical experience that this has been inadequately provided for.

Councilor Wilson asked how the city would address a situation where a large commercial developer wanted to place its trees only around the perimeter. Consultant Prager responded that calculating the parking lot canopy uses a different approach from calculating the site canopy. For the parking lot, the canopy would have to be directly over the pavement. It would be difficult to meet the coverage required by only placing trees on the perimeter. Council members discussed this language and its complexity; this area of the code will need additional thought. Mayor Dirksen noted that the problem has been with parking lot trees not reaching maturity and providing their full canopy potential. He suggested that there be language based on a percentage of tree canopy required and to include spacing requirements.

In response to an observation by Councilor Henderson, Councilor Wilson said that the expense for soils will be increased under the proposed code language because of the need for larger islands and additional soil. Discussion was held about where costs might increase but these increase costs would be appropriate to assure that trees planted would reach their full maturity and potential for canopy.

Associate Planner Daniels talked about the next steps in this process. The next discussion will be held on November 13. The two issues to be discussed on the 13th would be P7 – Administrative Rules and parking lot trees. The list of “issues for clarification” would not be discussed separately; however, Ms. Daniels said that if a councilor has a question or concern, the matter can be scheduled for further discussion.

Mayor Dirksen said the public hearing was continued to November 13, 2012.

5. ADOPT 2013 LEGISLATIVE AGENDA

Assistant City Manager Newton previewed this agenda item. The document before the City Council reflects the City Council consensus after its discussion on September 25.

Mayor Dirksen advised Council that based on dialogue that has occurred at the county and regional levels, he is asking for a change to one of the legislative items. Under Transportation, the second issue currently says “Seek additional funding, efficiencies and program support for multimodal transit and rail projects.” Because of timing, the mayor asked that this language be amended to specifically identify the Columbia River Crossing.

Motion by Council President Buehner, seconded by Councilor Wilson, to approve the 2013 legislative agenda as proposed with the amendment stated by Mayor Dirksen.

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The motion passed by a unanimous vote of City Council present:

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

City Manager Wine commented on the League of Oregon Cities briefing presentation available for the subject of property tax reform options. There may be an opportunity in the next couple of months to hear this briefing with adjacent jurisdictions. Mayor Dirksen said he has seen this presentation and it does a good job of explaining impacts and the unintended consequences of Measures 5 and Measure 50. There are adjustments recommended to make the tax system more sustainable and go a long way toward addressing our own budget issues.

6. COUNCIL LIAISON REPORTS

Council President Buehner provided an update on the Regional Water Providers Consortium. This group meets periodically to address region wide issues. At its October meeting, there was a presentation on the Consortium's history. After that, Paul Matthews reported on water utility revenue challenges. The consensus of the report was that more conservation is utilized as prices go up. At some point efficiencies will impact rates. Mr. Matthews said that the conclusion is that the base rate will need to increase.

Council President Buehner reported on the most recent Lake Oswego/Tigard Water Partnership Oversight Committee meeting held in October. The Partnership is requesting proposals on various aspects of the plan mostly relating to the raw water intake system. Some of the plant processes are also receiving attention. Construction documents are at about 60 percent of completion, except for the plant. The recommendation was for Mitsubishi to be the company to be used for the ozone system.

The land-use application in West Linn is before the Planning Commission again. The first hearing was last Wednesday night. Council President Buehner said she was very impressed with the presentation by the partnership's attorney and Tigard Public Works Director Dennis Koellermeier. She said she thought the Planning Commission's questions were answered. The hearing will continue to Thursday. It is hoped that the Planning Commission will be able to enter into the decision-making portion of the hearing after the proceedings on Thursday. Council President Buehner said that she believes whatever the Commission decides, the decision will be appealed to the West Linn City Council.

Mayor Dirksen advised that the recommendation of the West Linn planning staff to the Planning Commission was for approval.

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Councilor Woodard announced that the River Terrace planning kickoff meeting is tomorrow night at Deer Creek Elementary School.

7. NON AGENDA ITEMS

8. EXECUTIVE SESSION: Not held.

9. ADJOURNMENT: 10:12 PM

Motion by Council President Buehner, seconded by Councilor Wilson, to adjourn the meeting

The motion was passed by a unanimous vote of Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

/s/ Catherine Wheatley
Catherine Wheatley, City Recorder

Attest:

/s/ John L. Cook
Mayor, City of Tigard

Date: January 22, 2013

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